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EXAMINER				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/797,200

Applicant(s)

BANERJEE ET AL.

Examiner

HUA FAN

Art Unit

2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-21, 24-31, 34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-21, 24-31, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to Amendments/Remarks filed on 6/2/2008. Claims 1, 4-21, 24-31, and 34-35 are pending. Claims 1, 21, 24, 31, and 35 have been amended. Claim 2-3, 22-23, 32-33, and 36 have been cancelled.

Oath/Declaration

1. The *declaration* under 37 CFR 1.132 filed 6/2/2008 is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The clause regarding "willful false statements ..." required by 37 CFR 1.68 has been omitted.

37 CFR 1.68. Declaration in lieu of oath.

Any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration. Such declaration may be used in lieu of the oath otherwise required, if, and only if, the declarant is on the same document, warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. The declarant must set forth in the body of the declaration that all statements made of the declarant's own knowledge are true and that all statements made on information and belief are believed to be true.

18 U.S.C. 1001. Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 31-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 31-36 is drawn to functional descriptive material recorded on a computer-readable medium. Normally, the claim would be statutory. However, the specification, at paragraph [0123], lines 10-12 of PGPub, defines the claimed computer readable medium as encompassing statutory media such as a storage devices as well as non-statutory subject mater such as a "signal".

A "signal" embodying functional descriptive material is neither a process nor a product (i.e., a tangible "thing") and therefore does not fall within one of the four statutory classes of § 101. Rather, "signal" is a form of energy, in the absence of any physical structure or tangible material.

Because the full scope of the claim as properly read in light of the disclosure encompasses non-statutory subject matter, the claim as a whole is non-statutory.

The examiner suggests amending the claim to include the disclosed tangible computer readable storage media, while at the same time excluding the intangible transitory media such as signals, carrier waves, etc. Any amendment to the claim should be commensurate with its corresponding disclosure.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4-8, 10-18, 20-21, 24-27, 29-31, and 34-35 rejected under 35 U.S.C. 102(b) as being anticipated by HPL-2002-314R1 by Xu et al.

As to claim 1, HPL-2002-314R1 discloses a method of detecting a degradation of quality of service in a multicast tree in an application layer multicast network, the method comprising:

detecting at a child node in the multicast tree a degradation of quality of service associated with a service being received at the child node; determining whether the degradation of quality of service is resulting from a child-parent link or an upstream link to the child-parent link in the multicast tree (section 2.3, lines 18-42);

selecting a new parent node for the child node in response to detecting the degradation of quality of service is resulting from the child-parent link (section 2.3, lines 24-33); and

selecting a new parent node for a child node incident to the upstream link in response to detecting the degradation of quality of service is resulting from the upstream link (section 2.3, lines 34-42).

As to claim 4, HPL-2002-314R1 discloses a method of transmitting a complaint to the parent node, the complaint indicating a degradation of quality of service at the child node (section 2.3, lines 18-20); receiving a list of a set of candidate nodes in response to the degradation of quality of service resulting from the child-parent link; and selecting one of the candidate nodes as a new parent node for the child node (section 2.3, lines 24-32).

As to claim 5, HPL-2002-314R1 discloses a method of constructing a new service path in the multicast tree including the child node and the new parent node (section 2.3, lines 32-33; section 2.4, lines 14-18).

As to claim 6, HPL-2002-314R1 discloses a method of constructing a new service path further comprises: establishing a connection to the new parent node while maintaining a

connection to the parent node; synchronizing data received from the parent node and the new parent node; and terminating the connection to the parent node (section 2.4, lines 8-18).

As to claim 7, HPL-2002-314R1 discloses the method of selecting one of the candidate nodes as a new parent node for the child node comprises: measuring distances to each of the candidate nodes; determining a metric associated with the quality of service and each candidate node; and selecting one of the candidate nodes that is closest to the child node and that is operable to satisfy at least one quality of service characteristic (section 2.3, lines 30-32; section 2.2, lines 4-17).

As to claim 8, HPL-2002-314R1 discloses each of the candidate nodes is physically close to the child node (section 2.3, lines 27-29).

As to claim 10, HPL-2002-314R1 discloses detecting at a child node a degradation of quality of service comprises detecting a measured quality of service characteristic associated with the received service falling below a predetermined threshold (section 2.3, lines 14-19).

As to claim 11, HPL-2002-314R1 discloses detecting at a child node a degradation of quality of service comprises detecting degradation of quality of service as perceived by a user at the child node (section 2.3, lines 14-19; section 1, lines 64-65).

As to claim 12, HPL-2002-314R1 discloses quality of service includes at least one of a metric associated with processing data at a node receiving the service and a metric associated with transmitting data for the service between nodes in the multicast tree (section 2.2, lines 11).

As to claim 13, HPL-2002-314R1 discloses determining at the parent node whether quality of service associated with the service is degraded; transmitting a complaint to the parent node's parent node in the multicast tree indicating a degradation of quality of service at the parent

node in response to determining at the parent node that the quality of service is degraded; and requesting a list of a set of candidate nodes from a global information table in response to determining at the parent node that the quality of service is not degraded, wherein each of the candidate nodes is operable to provide the service to the child node and is physically close to the child node (section 2.3, lines 34-42).

As to claim 14, HPL-2002-314R1 discloses determining location of degradation of quality of service in a multicast tree in an application layer multicast network, the method comprising: receiving a complaint from a child node at a parent node in the multicast tree, the complaint indicating a degradation of quality of service of a service being received at the child node; and determining whether a cause of the degradation of quality of service is located in an upstream link or is located at a child-parent link (section 2.3, lines 18-42).

As to claim 15, HPL-2002-314R1 discloses determining whether a cause of the degradation of quality of service is located in an upstream link or is located at a child-parent link comprises: determining at the parent node whether quality of service associated with the service being received at the child node is degraded; transmitting a complaint to the parent node's parent node in the multicast tree indicating a degradation of quality of service at the parent node in response to determining at the parent node that the quality of service is degraded; and requesting a list of a set of candidate nodes from a global information table in response to determining at the parent node that the quality of service is not degraded, wherein each of the candidate nodes is operable to provide the service to the child node and is physically close to the child node (section 2.3, lines 24-42).

As to claim 16, HPL-2002-314R1 discloses requesting a list of a set of candidate nodes from a global information table comprises transmitting location information for the child node to a distributed hash table overlay network storing the global information table (section 2.1, lines 11-18; section 2.2, lines 7-9).

As to claim 17, HPL-2002-314R1 discloses the global information table includes at least location information and information associated with services provided by nodes in the application layer multicast network (section 2.1, lines 32-39).

As to claim 18, HPL-2002-314R1 discloses the global information table is stored in a plurality of distributed hash table nodes in the distributed hash table overlay network, such that each distributed hash table node stores information for nodes physically close in an underlying physical network (section 2, lines 8-16).

As to claim 20, HPL-2002-314R1 discloses the global information table stores information for nodes transmitting a complaint, the method comprising: searching the global information table for the set of candidate nodes such that the set of candidate nodes does not include a node that transmitted a complaint (section 2.1, lines 11-16).

As to claim 21, HPL-2002-314R1 discloses determining whether to reconfigure a multicast tree in an application layer multicast network, the method comprising:

detecting an occurrence of a predetermined condition in the application multicast network, wherein the predetermined condition is stored in a global information table stored in distributed hash table nodes in the network; determining whether to reconfigure the multicast tree in response to detecting the occurrence of the predetermined condition (section 2.3, lines 14-20), wherein determining whether to reconfigure the multicast tree comprises determining

whether reconfiguring the multicast tree improves quality of service for a node in the multicast tree (section 2.2, lines 9-13); and

reconfiguring the multicast tree in response to determining that reconfiguring the multicast tree improves quality of service for a node in the multicast tree (section 2.2, lines 14-17).

As to claim 24, HPL-2002-314R1 discloses a node in a multicast tree, the node comprising: means for detecting a degradation of quality of service associated with a service being received at the node; and means for transmitting a complaint to a parent node of the node in the multicast tree, the complaint indicating a degradation of quality of service at the child node (section 2.3, lines 14-20), wherein the multicast tree includes a service path comprising a source node, the parent node, and the node, and the parent node is an immediate parent node to the node such that data for a service is transmitted in the service path directly from the parent node to the node (section 2.3, lines 1-20; figure 3. Note the source node can be any node in the tree shown in figure 3, and it is implied that service data is transmitted from parent node to child node).

As to claim 25, HPL-2002-314R1 discloses means for receiving a list of a set of candidate nodes in response to the degradation of quality of service resulting from a child-parent link; and means for selecting one of the candidate nodes as a new parent node for the child node (section 2.3, lines 24-29).

As to claim 26, HPL-2002-314R1 discloses means for receiving notification of an occurrence of a predetermined condition; and means for determining whether to reconfigure the multicast tree in response to the occurrence of the predetermined condition (section 2.3, lines 18-20).

As to claim 27, HPL-2002-314R1 discloses a parent node connected to a child node in a multicast tree, the parent node comprising: means for receiving a complaint from the child node, the complaint indicating a degradation of quality of service of a service being received at the child node; and means for determining whether quality of service associated with the service is degraded at the parent node; means for transmitting a complaint to the parent node's parent node in the multicast tree indicating a degradation of quality of service at the parent node in response to determining at the parent node that the quality of service is degraded; and means for requesting a list of a set of candidate nodes from a global information table in response to determining at the parent node that the quality of service is not degraded, wherein each of the candidate nodes is operable to provide the service to the child node and is physically close to the child node (section 2.3, lines 18-42).

As to claim 29, see similar rejection to claim 17.

As to claim 30, see similar rejection to claim 18.

As to claim 31, see similar rejection to claim 1.

As to claim 34, HPL-2002-314R1 discloses computer software embedded on a computer readable medium, the computer software comprising instructions performing: transmitting a complaint to the parent node, the complaint indicating a degradation of quality of service at the child node; receiving a list of a set of candidate nodes in response to the degradation of quality of service resulting from the child-parent link; and selecting one of the candidate nodes as a new parent node for the child node (section 2.3, lines 18-33).

As to claim 35, see similar rejection to claim 21.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over HPL-2002-314R1 by *Xu et al.* in view of US Pub 2004/0156384 to Rune et al..

As to claim 9, *HPL-2002-314R1* discloses determining whether the complaint timed out. However, it does not expressly disclose retransmit the complaint if timeout occurs. *Rune et al.* discloses retransmitting the request when timeout occurs ([0090], lines 1-6).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the teaching of *HPL-2002-314R1* regarding determining whether complaint timed out with the teaching of *Rune et al.* regarding retransmitting the request when timeout occurs. The rational would have been to increase the reliability of the protocol, as exemplified in *Rune et al.*

7. Claims 19, 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over HPL-2002-314R1 by *Xu et al.* in view of HPL-2002-126R2 by *Xu et al.*

As to claim 19, *HPL-2002-314R1* discloses requesting a list of a set of candidate nodes from the global information table for the child node. However, *HPL-2002-314R1* does not expressly disclose hashing a landmark vector of the child node to identify a distributed hash table node to transmit the request. HPL-20020126R2 discloses hashing a landmark vector of the node to identify a distributed hash table node (section III A 2, lines 24-27).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the teachings of HPL-2002-314R1 regarding requesting a list of a set of candidate nodes from the global information table for the child node with the teachings of HPL-2002-126R2 regarding hashing a landmark vector of the node to identify a distributed hash table node. The suggestion/motivation would have been to establish connections with nodes in its physical proximity that are situated near network access points such as gateways or routers, that are highly available, and that have good fan-outs and forwarding capacities (HPL-2002-126R2, section III, lines 1-5).

As to claim 28, see similar rejection to claim 19.

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8. Claims 1, 4-5, 10, 12, 14, 24, and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2003/0012132 by Novaes et al., in view of "Construction of an Efficient Overlay Multicast Infrastructure for Real-time Applications" by Banerjee et al.

As to claim 1, Novaes et al. discloses a method of detecting a degradation of quality of service in a multicast tree in a multicast network ([0071], lines 10-17), the method comprising: detecting at a child node in the multicast tree a degradation of quality of service associated with a service being received at the child node ([0071], lines 10-17); determining whether the degradation of quality of service is resulting from a child-parent link or an upstream link to the child-parent link in the multicast tree ([0063], lines 1-15),

selecting a new parent node for the child node in response to detecting the degradation of quality of service is resulting from the child-parent link ([0063] , lines 10-13); and

selecting a new parent node for a child node incident to the upstream link in response to detecting the degradation of quality of service is resulting from the upstream link ([0063], lines 10-13).

However Novaes et al does not expressly disclose an application-level multicast tree. Banerjee et al. discloses a method of constructing and adapting an application level multicast tree based on quality of service (page3, left col., lines 24-32).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. regarding detecting a degradation of quality of service in a multicast tree in a multicast network with constructing and adapting an application level multicast tree based on quality of service, disclosed by Banerjee et al.. The suggestion/motivation would have been using application-level multicasting architecture relieves the access bottleneck at the server(s) (Banerjee et al., page 1, right col., lines 18-20).

As to claim 4, Novaes et al discloses a method of transmitting a complaint to the parent node, the complaint indicating a degradation of quality of service at the child node; receiving a list of a set of candidate nodes in response to the degradation of quality of service resulting from the child-parent link; and selecting one of the candidate nodes as a new parent node for the child node ([0071], lines 14-17; [0065], lines 12-15; [0063], lines 10-15).

As to claim 5, Novaes et al discloses a method of constructing a new service path in the multicast tree including the child node and the new parent node ([0065], lines 12-15).

As to claim 10, Novaes et al discloses detecting at a child node a degradation of quality of service comprises detecting a measured quality of service characteristic associated with the received service falling below a predetermined threshold ([0071], lines 10-17).

As to claim 12, Novaes et al discloses quality of service includes at least one of a metric associated with processing data at a node receiving the service and a metric associated with transmitting data for the service between nodes in the multicast tree ([0071], lines 10-17).

As to claim 14, Novaes et al discloses determining location of degradation of quality of service in a multicast tree in an application layer multicast network, the method comprising: receiving a complaint from a child node at a parent node in the multicast tree, the complaint indicating a degradation of quality of service of a service being received at the child node; and determining whether a cause of the degradation of quality of service is located in an upstream link or is located at a child-parent link ([0071], lines 10-17; [0063], lines 1-15).

As to claim 24, Novaes et al discloses a node in a multicast tree, the node comprising: means for detecting a degradation of quality of service associated with a service being received at the node; and means for transmitting a complaint to a parent node of the node in the multicast tree, the complaint indicating a degradation of quality of service at the child node ([0071], lines 10-17; [0063], lines 1-15), wherein the multicast tree includes a service path comprising a source node, the parent node and the node, and the parent node is an immediate parent node to the node such that data for a service is transmitted in the service path directly from the parent node to the node ([0041]-[0042], “publisher node” is source node, “parent node in the SAM tree relays a message to on of its descendants”),

As to claim 31, Novaes et al. discloses computer software embedded on a computer readable medium, the computer software comprising instructions performing: detecting at a child node in a multicast tree a degradation of quality of service associated with a service being received at the child node; determining whether the degradation of quality of service is resulting

from a child-parent link or an upstream link to the child-parent link in the multicast tree ([0071], lines 10-17; [0063], lines 1-15);

selecting a new parent node for a child node incident to the upstream link in response to detecting the degradation of quality of service is resulting from the upstream link ([0071], lines 10-17); and

selecting a new parent node for the child node in response to detecting the degradation of quality of service is resulting from the child-parent link ([0071], lines 10-17; [0063], lines 1-15).

9. Claim 6 rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2003/0012132 by Novaes et al., in view of “Construction of an Efficient Overlay Multicast Infrastructure for Real-time Applications” by Banerjee et al., as applied to claim 1 above, and further in view of “Application Level Hand-off Support for Mobile Media Transcoding Sessions” by Roy et al..

As to claim 6, Novaes et al. as modified by Banerjee et al. does not teach establishing a connection to the new parent node while maintaining a connection to the parent node, synchronizing data received from the parent node and the new parent node, or terminating the connection to the parent node. Roy et al. discloses above functions (hand-off process, page 97, section 4, lines 24-31).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the hand-off process disclosed by Roy et al.. The suggestion/motivation would have been to solve the problem when the movement of a client causes the current transcoding server to be inefficient for the client's new location (Roy et al., page 97, section 4, lines 1-4).

10. Claim 7-8, 13, 15-18, 20-21, 25-27, 34-35 rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2003/0012132 by Novaes et al., in view of "Construction of an Efficient Overlay Multicast Infrastructure for Real-time Applications" by Banerjee et al., as applied to claim 1 above, and further in view of "Building Topology-Aware Overlays using Global Soft-state" (HPL-2002-281) by Xu et al..

As to claim 7, Novaes-Banerjee does not expressly disclose measuring distances to each of the candidate nodes; determining a metric associated with the quality of service and each candidate node; and selecting one of the candidate nodes that is closest to the child node and that is operable to satisfy at least one quality of service characteristic . HPL-2002-281 discloses measuring distances to each of the candidate nodes; determining a metric associated with the quality of service and each candidate node; and selecting one of the candidate nodes that is closest to the child node and that is operable to satisfy at least one quality of service characteristic (section 1, lines 67-70; section 6, lines 1-3).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method of selecting candidate nodes disclosed by HPL-2002-281. The suggestion/motivation would have been to take advantage of the condition of the underlying physical network and effectively utilizes physical proximity information (HPL-2002-281, section 1, lines 5-9), and to achieve both efficiency and accuracy (HPL-2002-281, section 1, line 70).

As to claim 8, Novaes-Banerjee does not expressly disclose each of the candidate nodes is physically close to the child node. HPL-2002-281 discloses each of the candidate nodes is physically close to the child node (section 1, lines 76-82).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method disclosed by HPL-2002-281. The suggestion/motivation would have been to effectively take advantage of the conditions of the underlying physical network (HPL-2002-281, section 1, lines 5-6).

As to claim 13, Novaes et al discloses determining at the parent node whether quality of service associated with the service is degraded; transmitting a complaint to the parent node's parent node in the multicast tree indicating a degradation of quality of service at the parent node in response to determining at the parent node that the quality of service is degraded ([0071], lines 10-17). Novaes et al., however, does not teach requesting a list of a set of candidate nodes from a global information table in response to determining at the parent node that the quality of service is not degraded, wherein each of the candidate nodes is operable to provide the service to the child node and is physically close to the child node. HPL-2002-281 instead discloses a mechanism to provide above functions (section 1, lines 67-70; section 6, lines 1-3).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method of selecting candidate nodes disclosed by HPL-2002-281. See similar motivation in claim 7 rejection.

As to claim 15, Novaes et al discloses determining whether a cause of the degradation of quality of service is located in an upstream link or is located at a child-parent link comprises: determining at the parent node whether quality of service associated with the service being received at the child node is degraded; transmitting a complaint to the parent node's parent node

in the multicast tree indicating a degradation of quality of service at the parent node in response to determining at the parent node that the quality of service is degraded ([0071], lines 10-17; [0063], lines 1-15). Novaes et al. however, does not teach requesting a list of a set of candidate nodes from a global information table in response to determining at the parent node that the quality of service is not degraded, wherein each of the candidate nodes is operable to provide the service to the child node and is physically close to the child node. HPL-2002-281 instead discloses a mechanism to provide above functions (section 1, lines 67-70; section 6, lines 1-3).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method disclosed by HPL-2002-281. See similar motivation in claim 7 rejection.

As to claim 16, Novaes-Banerjee does not expressly disclose transmitting location information for the child node to a distributed hash table overlay network storing the global information table. HPL-2002-281 discloses requesting a list of a set of candidate nodes from a global information table comprises transmitting location information for the child node to a distributed hash table overlay network storing the global information table (section 1, lines 67-70, 73-82, 91-93).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method of selecting candidate nodes disclosed by HPL-2002-281. See similar motivation in claim 7 rejection.

As to claim 17, Novaes-Banerjee does not expressly disclose the global information table includes at least location information and information associated with services provided by nodes

in the application layer multicast network. HPL-2002-281 discloses the global information table includes at least location information and information associated with services provided by nodes in the application layer multicast network (section 1, lines 73-82, 91-93; section 6, lines 1-3).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method disclosed by HPL-2002-281. See similar motivation in claim 7 rejection.

As to claim 18, Novaes-Banerjee does not expressly disclose the global information table is stored in a plurality of distributed hash table nodes in the distributed hash table overlay network, such that each distributed hash table node stores information for nodes physically close in an underlying physical network. HPL-2002-281 discloses the global information table is stored in a plurality of distributed hash table nodes in the distributed hash table overlay network, such that each distributed hash table node stores information for nodes physically close in an underlying physical network (section 1, lines 73-82, 91-93).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method disclosed by HPL-2002-281. See similar motivation in claim 7 rejection.

As to claim 20, Novaes-Banerjee does not expressly disclose searching the global information table for the set of candidate nodes such that the set of candidate nodes does not include a node that transmitted a complaint. HPL-2002-281 et al discloses the global information table stores information for nodes transmitting a complaint, the method comprising: searching the global information table for the set of candidate nodes such that the set of candidate nodes does not include a node that transmitted a complaint (section 1, lines 67-70).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method disclosed by HPL-2002-281. See similar motivation in claim 7 rejection.

As to claim 21, Novaes et al discloses determining whether to reconfigure a multicast tree in an application layer multicast network, the method comprising: detecting an occurrence of a predetermined condition in the application multicast network; determining whether to reconfigure the multicast tree in response to detecting the occurrence of the predetermined condition ([0071], lines 10-17), wherein determining whether to reconfigure the multicast tree comprises determining whether reconfiguring the multicast tree improves quality of service for a node in the multicast tree ([0071], lines 10-17; [0063], lines 1-15; [0065]); and reconfiguring the multicast tree in response to determining that reconfiguring the multicast tree improves quality of service for a node in the multicast tree ([0071], lines 10-17; [0063], lines 1-15; [0065]).

Novaes et al., however does not teach the predetermined condition is stored in a global information table stored in distributed hash table nodes in the network. HPL-2002-281 discloses the predetermined QoS condition can be stored in a global information table in distributed hash table nodes in the network (section 1, lines 73-82; section 6, lines 1-3).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. with the method disclosed by HPL-2002-281. The suggestion/motivation would have been to provide a timely fix therefore maintain efficient routes (HPL-2002-281, section 1, lines 55-60).

As to claim 25, Novaes-Banerjee does not expressly disclose receiving a list of a set of candidate nodes in response to the degradation of quality of service resulting from a child-parent link; and means for selecting one of the candidate nodes as a new parent node for the child node. HPL-2002-281 discloses means for receiving a list of a set of candidate nodes in response to the degradation of quality of service resulting from a child-parent link; and means for selecting one of the candidate nodes as a new parent node for the child node (section 1, lines 64-70).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method of selecting candidate nodes disclosed by HPL-2002-281. See similar motivation in claim 7 rejection.

As to claim 26, Novaes et al discloses means for receiving notification of an occurrence of a predetermined condition; and means for determining whether to reconfigure the multicast tree in response to the occurrence of the predetermined condition ([0071], lines 10-17).

As to claim 27, Novaes et al discloses a parent node connected to a child node in a multicast tree, the parent node comprising: means for receiving a complaint from the child node, the complaint indicating a degradation of quality of service of a service being received at the child node; and means for determining whether quality of service associated with the service is degraded at the parent node; means for transmitting a complaint to the parent node's parent node in the multicast tree indicating a degradation of quality of service at the parent node in response to determining at the parent node that the quality of service is degraded ([0063], lines 1-15; [0071], lines 10-17). However, Novaes et al. does not teach requesting a list of a set of candidate nodes from a global information table in response to determining at the parent node that the

quality of service is not degraded, wherein each of the candidate nodes is operable to provide the service to the child node and is physically close to the child node. HPL-2002-281 discloses a mechanism to provide above functions (section 1, lines 64-82).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the teachings disclosed by Novaes et al. with the teachings disclosed by HPL-2002-281. The suggestion/motivation would have been to provide a timely fix therefore maintain efficient routes (HPL-2002-281, section 1, lines 55-60).

As to claim 34, Novaes et al discloses computer software embedded on a computer readable medium, the computer software comprising instructions performing: transmitting a complaint to the parent node, the complaint indicating a degradation of quality of service at the child node ([0071], lines 10-17). However Novaes et al. does not expressly disclose receiving a list of a set of candidate nodes in response to the degradation of quality of service resulting from the child-parent link; and selecting one of the candidate nodes as a new parent node for the child node. HPL-2002-281 discloses a mechanism to provide above functions (section 1, lines 64-82).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method of selecting candidate nodes disclosed by HPL-2002-281. See similar motivation in claim 7 rejection.

As to claim 35, see similar rejection to claim 21.

11. Claim 11 rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2003/0012132 by Novaes et al., in view of "Construction of an Efficient Overlay Multicast

Infrastructure for Real-time Applications" by Banerjee et al., as applied to claim 1 above, and further in view of US Pub 2005/0157660 by Mandato et al.

As to claim 11, Novaes et al discloses detecting at a child node a degradation of quality of service ([0071], lines 10-17); however, it does not expressly disclose the degradation of quality of service is perceived by users. Mandato et al., instead expressly discloses quality of services include user perceived quality of service ([0103]).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the method disclosed by Novaes et al. as modified by Banerjee et al., with the method of selecting candidate nodes disclosed by Mandato et al.. The suggestion/motivation of the combination would have been to provide current and intended network utilization, for example, the expected destinations and traffic volumes in terms of application-level QoS contracts (Mandato et al., [0065]).

12. Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2003/0012132 by Novaes et al., in view of "Construction of an Efficient Overlay Multicast Infrastructure for Real-time Applications" by Banerjee et al., as applied to claim 1 above, and further in view of US Pub 2004/0156384 to Rune et al..

As to claim 9, Novaes-Banerjee does not expressly disclose determining whether the complaint timed out and retransmitting the request when timeout occurs. Rune et al. discloses determining whether the complaint timed out and retransmitting the request when timeout occurs ([0090], lines 1-6).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the teaching of Novaes et al. with the teaching of Rune et al. regarding

retransmitting the request when timeout occurs. The rational would have been to increase the reliability of the protocol, as exemplified in Rune et al.

13. Claims 19, 28-30 rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2003/0012132 by Novaes et al., in view of "Construction of an Efficient Overlay Multicast Infrastructure for Real-time Applications" by Banerjee et al., as applied to claim 1 above, and further in view of "Building Topology-Aware Overlays using Global Soft-state" (HPL-2002-281) by Xu et al., and further in view of HPL-2002-126R2 by Xu et al.

As to claim 19, *HPL-2002-281* discloses requesting a list of a set of candidate nodes from the global information table for the child node (section 1, lines 64-70). However, *HPL-2002-281* does not expressly disclose hashing a landmark vector of the child node to identify a distributed hash table node to transmit the request. HPL-2002-126R2 discloses hashing a landmark vector of the node to identify a distributed hash table node (section III A 2, lines 24-27).

At the time of invention, it would have been obvious to a person of ordinary skilled in the art to combine the teachings of *HPL-2002-281* regarding requesting a list of a set of candidate nodes from the global information table for the child node with the teachings of HPL-2002-126R2 regarding hashing a landmark vector of the node to identify a distributed hash table node. The suggestion/motivation would have been to establish connections with nodes in its physical proximity that are situated near network access points such as gateways or routers, that are highly available, and that have good fan-outs and forwarding capacities (HPL-2002-126R2, section III, lines 1-5).

As to claim 28, see similar rejection to claim 19.

As to claim 29, see similar rejection to claim 17.

As to claim 30, see similar rejection to claim 18.

Response to Amendment

14. The *declaration* under 37 CFR 1.132 filed 6/2/2008 is insufficient to overcome the rejection of all pending claims (1, 4-21, 24-31, and 34-35) based upon the reference HPL-2002-314R1 by Xu et al applied under 35 U.S.C. 102 and 103 as set forth in the last Office action because:

- 1) The declaration lacks the clause regarding "willful false statements ..." required by 37 CFR 1.68, and therefore is defective; and/or
- 2) The declaration arguing "the "External 20030310" date shown on the first page of the reference is not the actual external publication date" is not convincing. The declaration asserts that "the "Date Cataloged" field indicates the external publication date which in this case is 3/21/03", but fails to set forth facts regarding why this date instead of the "external date" put on the reference is the external publication date, and what the "external date" printed on the reference actually represents.

Response to Arguments

15. Applicant's arguments filed on 6/2/2008 have been fully considered but they are not persuasive. See the following examiner's response for reasons.

Examiner's response

16. Applicant argues on page 13 that HPL-2002-314R1 was not published more than 1 year prior to the filing date of the present application based on their attached declaration and exhibit

1. Examiner disagrees based upon the reasons set forth in the previous paragraph.

17. Applicant argues the amended claims 31 and 35 reciting a tangible computer readable medium overcomes the current 101 rejection. Examiner disagrees because the specification in paragraph [123] still contains "signal" as part of the computer readable medium. Applicant is suggested to exclude "signal" from the specification and include "computer readable storage medium" in the related claims in order to overcome this 101 rejection.

18. Applicant argues on page 15 that "external 20030310" printed on the HPL-2002-314R1 reference is not the external publication date; instead, March 21, 2003 is the external publication date. Examiner disagrees based upon the reasons set forth in earlier paragraph regarding "the declaration under 37 CFR 1.132 filed on 6/2/2008 is insufficient to overcome the current rejections".

19. Applicant's argument with respect to the dependent claims 9, 19, and 28 on page 16-17 is based on the same argument presented for HPL-2002-314R1, which has been addressed in the above paragraph.

20. Applicant argues on page 17 with respect to claim s 1-5, 10, 12, 14, 24, 31-33 that Novaes et al fails to teach or suggest the limitation of the independent claim 1 regarding "detecting the degradation of quality of service is resulting from an upstream link to the child-parent link". Examiner disagrees based on the following reasons:

1) First of all, the independent claim 1 does not have the recited limitation, instead, the related limitations in claim 1 is written as "detecting at a child node in the multicast tree a

degradation of quality of service associated with a service being received at the child node; determining whether the degradation of quality of service is resulting from a child-parent link or an upstream link to the child-parent link in the multicast tree; selecting a new parent node for a child node incident to the upstream link in response to detecting the degradation of quality of service is resulting from the upstream link; and selecting a new parent node for the child node in response to detecting the degradation of quality of service is resulting from the child-parent link".

2) Secondly, Novaes et al discloses these related limitations: detecting at a child node in the multicast tree a degradation of quality of service associated with a service being received at the child node ([0071], lines 10-17); determining whether the degradation of quality of service is resulting from a child-parent link or an upstream link to the child-parent link in the multicast tree ([0063], lines 1-15); selecting a new parent node for a child node incident to the upstream link in response to detecting the degradation of quality of service is resulting from the upstream link ([0071], lines 10-17); and selecting a new parent node for the child node in response to detecting the degradation of quality of service is resulting from the child-parent link ([0071], lines 10-17; [0063], lines 1-15).

As disclosed in paragraph [0071], lines 10-17, degradation of quality of service associated with a service being received can be detected at the child node, and then a new node placement is requested from the publisher. Since the publisher will receive the new node placement requests from each node in the tree if such node detects a degradation of service, i.e., the parent node will also send a new node placement to the publisher in the case the QoS degradation resulted from an upstream link to the child-parent link. Therefore the publisher has

the knowledge of and determines whether the degradation of the service resulted from the child-parent link or upstream link to the parent-child link and then selecting a new parent node is performed by the publisher accordingly. Also as disclosed in [0063], lines 1-15, each node will report to the publisher if it does not get response from its parent, same logic leads to the conclusion that the publisher node has the knowledge of and determines where the degradation results from in the tree. It is to be noted that claim 1 claims “determining whether the degradation of quality of service is resulting from a child-parent link or an upstream link to the child-parent link in the multicast tree; selecting...”, but does not specify which node performs these functions. Therefore, Novaes et al teaches all these limitations in claim 1.

21. Applicant argues on page 18 that Novaes fails to disclose “the child node measuring and comparing QoS for an upstream link”. This limitation is not claimed therefore will not be addressed. See similar note in the previous paragraph of response.

22. Applicant argues on page 18 that Novaes fails to teach or suggest “receiving a complaint from a child node at a parent node in the multicast tree, the complaint indicating a degradation of quality of service of a service being received at the child node”. Examiner disagrees because Novaes discloses receiving a complaint from a child node at a parent node in the multicast tree, the complaint indicating a degradation of quality of service of a service being received at the child node ([0071], lines 10-17; [0063], lines 1-15). As disclosed by Novaes, the publisher node, which is “a parent node in the multicast tree”, receives the complaint from a child node, the complaint indicating a degradation of QoS of a service being received at the child node.

23. Applicant’s argument on page 19, with respect to claim 6 is based on the argument for claim 1, which has already been addressed above.

24. Applicant argues on page 19 with respect to claim 21, 35, and 27 that neither Novacs nor any of the other prior art of record discloses "determining whether reconfiguring will actually improve the QoS and then reconfiguring in response to determining the QoS will be improved". Examiner disagrees because Novacs discloses in [0071], lines 10-17, that the current QoS (c) is monitored and then compared to QoS threshold (p); and if c is less than p, a new node placement is requested from the publisher. "The subscriber node can indicate if it requires additional monitoring with the objective of detecting changes in the underlying point to point network that could improve its reception of multicasted messages" ([0065]).
25. Applicant asserts on page 20 that none of the claimed features in claim 27 are taught or suggested by the prior art of record, without any arguments. Please see the rejections to these limitations above.

Conclusion

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUA FAN whose telephone number is (571)270-5311. The examiner can normally be reached on M-F 7:30am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. F./
Examiner, Art Unit 2152

/Jeffrey Pwu/
Supervisory Patent Examiner, Art Unit 2146